

May 4, 2015

VIA ECFS

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Stephanie A. Joyce**

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202.857.6081 DIRECT  
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Re: Ongoing Payment of Interstate Site Commissions in Contravention of *Inmate Rate Order* (FCC 13-113)

Dear Secretary:

Securus Technologies, Inc. (“Securus”) submits this letter to apprise the Commission of additional violations of the *Inmate Rate Order*<sup>1</sup> – specifically, the ongoing payment of site commissions on interstate calls by ICSolutions, LLC (“ICSolutions”), a provider of Inmate Calling Services (“ICS”).

As Securus has explained in previous letters,<sup>2</sup> the *Inmate Rate Order* states that site commissions must not be paid out of interstate calling rates.<sup>3</sup> Site commissions “are not costs that are reasonably and directly related to the provision of ICS.”<sup>4</sup> And as the Wireline Competition Bureau made clear in a subsequent release, the partial stay entered by the U.S. Court of Appeals for the D.C. Circuit “did not disturb the Commission’s determinations regarding site

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<sup>1</sup> WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-113, 28 FCC Rcd. 14107 (2013).

<sup>2</sup> WC Docket No. 12-375, Letter from Stephanie Joyce, Counsel to Securus, to Marlene H. Dortch, FCC (July 30, 2014); Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC (May 15, 2014).

<sup>3</sup> *Inmate Rate Order* ¶ 3 (site commissions are a “significant factor driving these excessive rates” that “have caused inmates and their friends and families to subsidize everything from inmate welfare to salaries and benefits, states’ general revenue funds, and personnel training.”).

<sup>4</sup> *Inmate Rate Order* ¶ 57.

commissions.”<sup>5</sup>

Securus ceased paying site commissions on interstate calls beginning February 11, 2014, the day that the *Inmate Rate Order* became effective.<sup>6</sup> Although Securus believes that site commission revenue funds important programs, and has advocated in this docket that site commissions should be permitted for all calls in the forthcoming new rules,<sup>7</sup> federal law at this time prohibits interstate site commissions. That is, in Securus’s experience, it is inescapable that an ICS carrier will pass through the cost of site commissions in its rates, particularly under the Commission’s new Rate Caps. Securus believes that, under the Rate Caps, it is economically impossible to continue paying commissions while covering the cost of service and without passing through commissions to end users in the calling rates.

Securus now has evidence that ICSolutions not only promised to pay, but actually is paying, site commissions on interstate calls **to all of its correctional facility customers**. Attached is a certified transcription of a portion of an in-person presentation that ICSolutions made to San Bernadino County, California on January 21, 2015. ATTACHMENT A.

The transcript records the words of Brendan Philbin, Vice President – Business Operations for ICSolutions, who assures San Bernadino County that ICSolutions will pay site commissions on **all** calls and states that ICSolutions presently does so for **all** of its correctional facilities. Mr. Philbin states, in part:

All our calling is commissionable. A lot of confusion in the industry. A lot of suppliers are not paying commission on interstate calling. Not ICS. **We have honored every single contract, and we continue to pay commission on interstate.**

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<sup>5</sup> WC Docket No. 12-375, *Wireline Competition Bureau Addresses the Payment of Site Commissions for Interstate Inmate Calling Services*, DA 14-1206, at 2 (Aug. 20, 2014) (citing *Securus Techs., Inc., et al. v. FCC*, No. 13-1280, Order (Jan. 13, 2014)).

<sup>6</sup> June 4, 2014 Letter at 3.

<sup>7</sup> E.g., WC Docket No. 12-375, Securus Comments at 11-13 (Jan. 11, 2015); Securus Reply Comments at 1-6 (Jan. 27, 2015); Letter from Securus, Global Tel\*Link, and Telmate LLC to Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O’Rielly at 3-4 (filed by Cherie Kiser, Counsel to Global Tel\*Link) (Sept. 15, 2014). Securus advocates a per-minute cost recovery mechanism to fund site commissions; this rate mechanism would be in addition to the per-minute calling rate that the Commission will set based on ICS carriers’ average per-minute costs as reported for the Mandatory Data Collection in July and August 2014.

And we will continue to pay interstate – we’ll pay commissions on interstate.<sup>8</sup>

This presentation is an admission by ICSolutions that it has never ceased paying site commissions on interstate calls. It is impossible that a carrier could be remitting such funds to *any* facility, let alone *all* of its facilities, unless those funds are obtained via interstate calling rates. ICSolutions therefore must be acting in violation of the *Inmate Rate Order*.

The Commission should investigate ICSolutions on this matter. If interstate site commissions are being paid from calling rates, the Commission should enter an order “lowering interstate ICS rates” along with demanding “refunds to end users”<sup>9</sup> and fines for each non-compliant interstate call.<sup>10</sup>

Please let me know if you need any further information from Securus. Thank you for your consideration.

Sincerely,

s/Stephanie A. Joyce

*Counsel to Securus Technologies, Inc.*

Attachment

cc: Commissioner Mignon Clyburn (*via electronic mail* Mignon.Clyburn@fcc.gov)  
Rebekah Goodheart, Legal Advisor to Commissioner Clyburn (*via electronic mail* Rebekah.Goodheart@fcc.gov)

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<sup>8</sup> Att A. at 2:6-12 (emphasis added). This transcript was created from a video obtained via a public records request.

<sup>9</sup> DA 14-1206 at 2.

<sup>10</sup> “In the case of carriers, such penalties can include forfeitures of up to \$160,000 for each violation or each day of a continuing violation, up to a maximum of \$1,575,000 per continuing violation.” *Inmate Rate Order* ¶ 118.

# **ATTACHMENT A**

ICSOLUTIONS

Excerpt of Presentation to San Bernardino County, California

January 21, 2015

1 MR. PHILBIN: (34:35) First of all,  
2 before I leave this.

3 Eliminate revenue diversion calling.  
4 More money for calling.

5 At the bottom of this.

6 All our calling is commissionable. A  
7 lot of confusion in the industry. A lot of suppliers  
8 are not paying commission on interstate calling.

9 Not ICS. We have honored every  
10 single contract, and we continue to pay commissions  
11 on interstate. And we will continue to pay  
12 interstate -- we'll pay commissions on interstate.

13 There is -- the FCC has done nothing  
14 forbidding payment of commission at all. All the FCC  
15 has done is capped the rate on interstate calling.  
16 That's all they have done. They have not in any way  
17 said to providers or to anybody, they have not told  
18 providers, they have not brought up the issue that  
19 you cannot pay commissions or that a facility cannot  
20 pay commissions.

21 We continue to pay commissions.  
22 Every one every our dollars are commissionable  
23 dollars. (35:18)

24

25

1 Certificate  
2 Of  
3 Certified Shorthand Reporter  
4

5 I, George A. Haas, Certified Shorthand  
6 Reporter, duly qualified in and for the State of  
7 California, do hereby that the foregoing  
8 transcript is a true and correct transcript of my  
9 original stenographic notes taken from audio file(s).

10 I further certify that I am neither  
11 attorney or counsel for, nor related to or employed  
12 by any of the parties to the action in which this  
13 deposition is taken; and furthermore, that I am not a  
14 relative or employee of any attorney or counsel,  
15 employed by the parties hereto or financially  
16 interested in said action.

17 IN WITNESS WHEREOF, I have hereunto set  
18 my hand this 30th day of April 2015.

19  
20  
21 

22  
23  
24  
25  
GEORGE A. HAAS, CSR NO. 5939



<b>A</b>	<b>furthermore</b> 3:13	<b>Reporter</b> 3:3,6 <b>revenue</b> 2:3
<b>action</b> 3:12,16 <b>anybody</b> 2:17 <b>April</b> 3:18 <b>attorney</b> 3:11,14 <b>audio</b> 3:9	<b>G</b>	<b>S</b>
<b>B</b>	<b>George</b> 3:5,21	<b>San</b> 1:11 <b>set</b> 3:17 <b>Shorthand</b> 3:3,5 <b>single</b> 2:10 <b>State</b> 3:6 <b>stenographic</b> 3:9 <b>suppliers</b> 2:7
<b>Bernardino</b> 1:11 <b>bottom</b> 2:5 <b>brought</b> 2:18	<b>H</b>	<b>T</b>
<b>C</b>	<b>Haas</b> 3:5,21 <b>hand</b> 3:18 <b>hereto</b> 3:15 <b>hereunto</b> 3:17 <b>honored</b> 2:9	<b>taken</b> 3:9,13 <b>told</b> 2:17 <b>transcript</b> 3:8,8 <b>true</b> 3:8
<b>California</b> 1:11 3:7 <b>calling</b> 2:3,4,6,8 2:15 <b>capped</b> 2:15 <b>Certificate</b> 3:1 <b>Certified</b> 3:3,5 <b>certify</b> 3:10 <b>commission</b> 2:8,14 <b>commissionable</b> 2:6 2:22 <b>commissions</b> 2:10 2:12,19,20,21 <b>confusion</b> 2:7 <b>continue</b> 2:10,11 2:21 <b>contract</b> 2:10 <b>correct</b> 3:8 <b>counsel</b> 3:11,14 <b>County</b> 1:11 <b>CSR</b> 3:21	<b>I</b>	<b>U</b>
<b>California</b> 1:11 3:7 <b>calling</b> 2:3,4,6,8 2:15 <b>capped</b> 2:15 <b>Certificate</b> 3:1 <b>Certified</b> 3:3,5 <b>certify</b> 3:10 <b>commission</b> 2:8,14 <b>commissionable</b> 2:6 2:22 <b>commissions</b> 2:10 2:12,19,20,21 <b>confusion</b> 2:7 <b>continue</b> 2:10,11 2:21 <b>contract</b> 2:10 <b>correct</b> 3:8 <b>counsel</b> 3:11,14 <b>County</b> 1:11 <b>CSR</b> 3:21	<b>ICS</b> 2:9 <b>ICSOLUTIONS</b> 1:10 <b>industry</b> 2:7 <b>interested</b> 3:16 <b>interstate</b> 2:8,11 2:12,12,15 <b>issue</b> 2:18	<b>V</b>
<b>D</b>	<b>J</b>	<b>W</b>
<b>day</b> 3:18 <b>deposition</b> 3:13 <b>diversion</b> 2:3 <b>dollars</b> 2:22,23 <b>duly</b> 3:6	<b>January</b> 1:12	<b>way</b> 2:16 <b>we'll</b> 2:12 <b>WHEREOF</b> 3:17 <b>WITNESS</b> 3:17
<b>E</b>	<b>K</b>	<b>X</b>
<b>Eliminate</b> 2:3 <b>employed</b> 3:11,15 <b>employee</b> 3:14 <b>Excerpt</b> 1:11	<b>L</b>	<b>Y</b>
<b>F</b>	<b>leave</b> 2:2 <b>lot</b> 2:7,7	<b>Z</b>
<b>facility</b> 2:19 <b>FCC</b> 2:13,14 <b>file(s)</b> 3:9 <b>financially</b> 3:15 <b>First</b> 2:1 <b>forbidding</b> 2:14 <b>foregoing</b> 3:7 <b>further</b> 3:10	<b>M</b>	<b>0</b>
	<b>money</b> 2:4	<b>1</b>
	<b>N</b>	<b>2</b>
	<b>neither</b> 3:10 <b>notes</b> 3:9	<b>2015</b> 1:12 3:18 <b>21</b> 1:12
	<b>O</b>	<b>3</b>
	<b>original</b> 3:9	<b>30th</b> 3:18 <b>34:35</b> 2:1 <b>35:18</b> 2:23
	<b>P</b>	<b>4</b>
	<b>parties</b> 3:12,15 <b>pay</b> 2:10,11,12,19 2:20,21 <b>paying</b> 2:8 <b>payment</b> 2:14 <b>PHILBIN</b> 2:1 <b>Presentation</b> 1:11 <b>providers</b> 2:17,18	<b>5</b>
	<b>Q</b>	<b>5939</b> 3:21
	<b>qualified</b> 3:6	
	<b>R</b>	
	<b>rate</b> 2:15 <b>related</b> 3:11 <b>relative</b> 3:14	